

MARK WEST 1/4/2019

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1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF MISSOURI  
3 EASTERN DIVISION  
4  
5 MALEEHA AHMAD, ET AL., )  
6 Plaintiffs, )  
7 vs. ) Case No. 4:17-CV-2455-CDP  
8 CITY OF ST. LOUIS, )  
9 MISSOURI, )  
10 Defendant. )

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DEPOSITION OF MARK WEST  
TAKEN ON BEHALF OF THE PLAINTIFFS  
JANUARY 4, 2019

Exhibit S

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7 vs. ) Case No. 4:17-CV-2455-CDP  
8 CITY OF ST. LOUIS, )  
9 MISSOURI, )  
10 Defendant. )

11

12

13 DEPOSITION OF WITNESS, MARK WEST,  
14 produced, sworn and examined on the 4th day of  
15 January, 2019, between the hours of eight o'clock  
16 in the forenoon and six o'clock in the afternoon of  
17 that day, at the Office of the St. Louis City  
18 Counselor, 1200 Market Street, City Hall, St.  
19 Louis, Missouri, before Tara Schwake, a Registered  
20 Professional Reporter, Certified Realtime Reporter,  
21 Certified Shorthand Reporter (IL), Certified Court  
22 Reporter (MO), and Notary Public within and for the  
23 State of Missouri.

24

25

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1 APPEARANCES

2 FOR THE PLAINTIFFS:

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25 transcripts@alarislitigation.us

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1                   IT IS HEREBY STIPULATED AND AGREED by  
2   and between Counsel for Plaintiffs and Counsel for  
3   Defendant that this deposition may be taken by Tara  
4   Schwake, Notary Public and Certified Realtime  
5   Reporter, thereafter transcribed into typewriting,  
6   with the signature of the witness being expressly  
7   waived.

8                   MARK WEST,  
9   of lawful age, having been produced, sworn, and  
10   examined on the part of Plaintiffs, testified as  
11   follows:

12                                 \* \* \* \* \*

13                   (Deposition commenced at 10:20 a.m.)

14                                 EXAMINATION

15   QUESTIONS BY MR. ROTHERT:

16                 **Q       Good morning, Mr. West. Could you**  
17   **state your name for the record, please?**

18                 A       Mark West.

19                 **Q       My name's Tony Rotherth, we met just a**  
20   **moment ago and I am one of the attorneys**  
21   **representing the plaintiffs in this case against**  
22   **the City.**

23                                 **Have you ever been deposed before?**

24                 A       Yes.

25                 **Q       Do you know how many times?**

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1           A       I don't know.

2           Q       **More than five times?**

3           A       Yes.

4           Q       **More than ten?**

5           A       Yes.

6           Q       **More than twenty?**

7           A       I would say yes.

8           Q       **Okay. You've been deposed a lot.**

9                   MR. DIERKER: He's a very active

10 officer.

11           Q       **(BY MR. ROTHERT) Do you have an**

12 **approximate number of times you've been deposed?**

13 **Or --**

14           A       No, I -- it would just be guessing,

15 sir.

16           Q       **Okay. Have you testified in court**

17 **previously?**

18           A       Yes.

19           Q       **And has that been at least a dozen**

20 **times?**

21           A       Oh, yes.

22           Q       **Have you ever testified in a case in**

23 **which you have been a defendant?**

24           A       Yes.

25           Q       **Do you know in how many cases you**

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1     **have been a defendant?**

2             A       I can think of one recently. It was  
3     just a case where it was similar, it was a  
4     Sovereign citizen didn't like that I pulled him  
5     over and he sued myself and the city in civil  
6     court.

7             Q       **Okay. Any others that you know of**  
8     **where you have been the defendant?**

9             A       There was probably several where I  
10    was named with the city, like -- like this here, I  
11    guess.

12            MR. DIERKER: You haven't been named  
13    in this case.

14            A       Oh, okay. My name's there, I don't  
15    know.

16            Q       **(BY MR. ROTHERT) You are welcome.**  
17    **Okay. Any lawsuits outside of your employment with**  
18    **the city in which you have been a defendant?**

19            A       No, not that I know of.

20            Q       **Since you've testified some times**  
21    **before, I assume you know, but I'll just ask you to**  
22    **be sure to answer verbally so the court reporter**  
23    **can get it down.**

24            A       Yes.

25            Q       **If you don't understand a question,**

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1 will you please tell me so that -- and I will try  
2 to reword it?

3 A Rephrase it, yes.

4 Q And you can take -- ask for a break  
5 at any time. I hope that we won't be here long  
6 enough that we need many breaks, but if you do ask  
7 for a break, I'd ask you to do it after you answer  
8 whatever question is pending.

9 A Yes.

10 Q Have you taken any medications,  
11 drugs, or had, consumed any alcohol that would  
12 affect your ability --

13 A No.

14 Q -- to testify today?

15 A No.

16 Q Do you have any health conditions  
17 that affect your ability to remember things or  
18 testify?

19 A No.

20 Q Did you do anything to prepare for  
21 today's deposition?

22 A No.

23 Q Where do you -- where do you live?

24 A In Ste. Genevieve County.

25 Q And how long have you lived in Ste.



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1       **Genevieve County?**

2               A       Approximately eight years.

3               Q       How old are you?

4               A       Fifty-one.

5               Q       Were you born in 1967?

6               A       Yes.

7               Q       Did you graduate high school?

8               A       Yes.

9               Q       From where?

10              A       Ste. Genevieve High School.

11              Q       What year did you graduate?

12              A       1985.

13              Q       What -- what's the -- what education  
14       have you had after high school?

15              A       I have a Bachelor's Degree in  
16       business management.

17              Q       Where did you receive your Bachelor's  
18       Degree in business management from?

19              A       Webster University.

20              Q       And what year did you receive your  
21       Bachelor's Degree from Webster?

22              A       2000.

23              Q       All right. Beyond the Bachelor's  
24       Degree in management from Webster University, do  
25       you have any other education beyond -- beyond high

1 school?

2 A A Associate Degree in criminal  
3 justice from Meramec, I graduated that in '93.

4 Q Okay. Besides the Associate's Degree  
5 from Meramec and the Bachelor's Degree from Webster  
6 University, any education beyond high school?

7 A No.

8 Q All right. Did you graduate from a  
9 police academy as well?

10 A Yes.

11 Q Which police academy?

12 A St. Louis Police Academy.

13 Q Is that the only police academy you  
14 graduated from?

15 A Yes.

16 Q When did you graduate from the  
17 academy?

18 A 1994.

19 Q Where are you currently employed?

20 A St. Louis Metropolitan Police  
21 Department.

22 Q How long have you been employed at  
23 the St. Louis Metropolitan Police Department?

24 A Since January 1994.

25 Q What's your current rank or position?

1 A Police officer.

2 Q And have you been a police officer  
3 since January 1994, or have you had other positions  
4 or ranks?

5 A Detective is a position, and I have  
6 been a detective several times.

7 Q Okay. What years were you detective?

8 A '98, '99, and 2000, and again in  
9 2010, '11, and '12.

10 Q Other than when you were a detective,  
11 have you been anything other than a police officer,  
12 any other rank?

13 A No.

14 Q Prior to your employment with the St.  
15 Louis Metropolitan Police Department in 1994, where  
16 were you employed?

17 A The US Army.

18 Q Okay. Prior to your employment with  
19 the US Army --

20 A High school.

21 Q High school. During your time at the  
22 St. Louis Metropolitan Police Department since  
23 January 1994, have you had any other side jobs?

24 A Well, everybody works a little side  
25 jobs, security, stuff like that, police related.

1           Q       Who have you worked for as a side  
2    job?

3           A       Hudson Security, US Marshals Office,  
4    Hi-Tech Security Company, GCI Security.

5           Q       Could you repeat that?

6           A       GCI security. Those are probably the  
7    main ones.

8           Q       Within the last two years have you  
9    worked for any of those companies that you listed?

10          A       No, I haven't worked for any of them  
11   in probably the last four or five years.

12          Q       Okay. Have you worked any side jobs  
13   in the last two years?

14          A       No.

15          Q       So you were in the US Army. What  
16   years were you in the Army?

17          A       Active duty from '84 through '92.

18          Q       And then were you in the Reserves  
19   after that?

20          A       Reserves from '92 through 2005.

21          Q       And active duty, what rank did you  
22   achieve?

23          A       Active duty, I was a staff sergeant.

24          Q       And then in Reserves, what was your  
25   highest rank?

1 A Promoted to lieutenant.

2 Q What were the circumstances of your  
3 discharge from active duty?

4 A I wanted to go to college.

5 Q And what were the circumstances of  
6 your discharge from Reserves?

7 A Twenty years.

8 Q Just retiring?

9 A Yes.

10 Q What are your current duties as a  
11 police officer for the St. Louis Metropolitan  
12 Police Department?

13 A Uniformed patrol in the 1st District.

14 Q How long have you been uniformed  
15 patrol in the 1st District?

16 A Since 2013, I believe.

17 Q Can you describe what or where the  
18 1st District is?

19 A Southern portion of the city. It  
20 bounds St. Louis County, the riverfront, Chippewa,  
21 and roughly Kingshighway over to Macklind.

22 Q Are you also part of something called  
23 the Civil Disobedience Team?

24 A No.

25 Q Have you ever been part of the Civil

1     **Disobedience Team?**

2             A       No.

3             **Q       Have you ever been part of something**  
4     **called Rapid Deployment Unit?**

5             A       No.

6             **Q       Do you know what a Civil Disobedience**  
7     **Team is?**

8             A       Yes.

9             **Q       What is it to your understanding?**

10            A       A CDT, they respond to incidents  
11    where the police department believes there is going  
12    to be some kind of protest or civil disobedience.

13            **Q       Is there something called a, in the**  
14     **St. Louis Metropolitan Police Department, is there**  
15     **something called a Rapid Deployment Unit?**

16            A       There was a Rapid Deployment Unit.  
17    But I think it was only a unit for about two years,  
18    and I don't think they've had it -- just guessing,  
19    maybe 2012 time frame, 2013?

20            **Q       And what was the Rapid Deployment**  
21     **Unit?**

22            A       It was -- I guess it was kind of a  
23    replacement for the Mobile Reserve Unit, a unit  
24    where if there was a, like a hotspot of criminal  
25    activity, somebody had a lot of shootings in an

1 area or something, that district commander could  
2 call the commander of that unit and ask for an  
3 additional squad for patrol.

4 **Q How long has there been a Civil**  
5 **Disobedience Team?**

6 **A** I don't know.

7 **Q Did the Civil Disobedience Team, if**  
8 **you know, replace the Rapid Deployment Unit?**

9 **A** Not that I know of.

10 **Q Do you know how many police officers**  
11 **there are in the St. Louis Metropolitan Police**  
12 **Department?**

13 **A** I would estimate close to 1,100.

14 **Q I know you're not part of the Civil**  
15 **Disobedience Team. Have you ever received any**  
16 **Civil Disobedience Team training?**

17 **A** Not with them, no.

18 **Q With -- have you received it with any**  
19 **-- civil disobedience training with anyone?**

20 **A** No, they select guys specifically for  
21 that unit. Usually younger guys.

22 **Q Even though you're not part of the**  
23 **Civil Disobedience Team, have you ever been called**  
24 **upon to respond to protests or civil disobedience**  
25 **in the city?**

1 A Yes.

2 Q When was the most recent time that  
3 you know of that you were called on to respond to  
4 protests or civil disobedience in the city?

5 A Well, a year and a half ago, I guess  
6 that would have been the night of the 17th, we were  
7 called down to -- I was still in uniform, handling  
8 the radio calls, but we were called down I guess as  
9 a Reserve, and we stood responding to 1200 Clark in  
10 front of the old police headquarters.

11 Q And this would be September 17, 2017?

12 A I would think so. That's probably  
13 the day.

14 Q Okay. Would it have been a Sunday,  
15 if you remember?

16 A I'll take your word for it. I -- we  
17 were in the middle of 12-hour shifts. I couldn't  
18 tell you what day it was.

19 Q That's the most recent time that you  
20 have been called upon to --

21 A Yes.

22 Q I have to finish.

23 A Oh, okay.

24 Q September 17 would have been the most  
25 recent time you were called upon to respond to a



1     **protest or civil disobedience?**

2             A       Yes.

3                     (Exhibit 1 marked for identification  
4     by the court reporter.)

5             Q       **(BY MR. ROTHERT) I'm going to hand**  
6     **you what's been marked as Exhibit 1 with today's**  
7     **date, 1/4/19 in the corner. And I have handed a**  
8     **copy to Mr. Dierker as well.**

9                     **Do you recognize this photograph?**

10            A       It looks like part of the CDT team.

11            Q       **Okay. Have you ever seen this**  
12     **photograph before?**

13            A       I think so, yes.

14            Q       **Did you take it?**

15            A       No.

16            Q       **Do you recognize any of the people in**  
17     **the photographs -- photograph?**

18            A       Some of them. I think I recognize  
19     two of them.

20            Q       **Okay. Can you -- would you -- I'm**  
21     **going to hand you a pen. Will you circle on**  
22     **Exhibit 1 the two that you recognize?**

23            A       I think that this -- oh, it doesn't  
24     show up very well.

25                     MR. DIERKER: Want me to get a

1 marker?

2 (Off the record.)

3 Q (BY MR. ROTHERT) Will you put a  
4 letter A by that person?

5 A (Witness complies.)

6 Q Okay. Person A that you've marked on  
7 Exhibit 1.

8 A I think that's Ed, Eddie Gonzalez.  
9 He's retired. And the only other person, it's hard  
10 to tell with the photo but because she's got  
11 stripes on, she's a sergeant, I think that could be  
12 Sergeant Carolyn Wiener (phonetic), I'll put a B by  
13 her. I think that's her. And the rest of them, I  
14 don't recognize any of them.

15 Q Can you tell or do you know where  
16 this picture was taken?

17 A Well, it says "Thank you for visiting  
18 Washington Avenue entertainment," so I'm going to  
19 assume that this is somewhere on Washington Avenue.  
20 It looks like it's downtown by the -- by the  
21 buildings, but I've never been assigned to that  
22 district and I don't hang out there.

23 Q Did you ever post this picture on  
24 your Facebook page?

25 A I don't know. I think I saw it on

1 Facebook somewhere.

2 Q All right. Do you utilize Facebook?

3 A Yes.

4 MR. ROTHERT: We can mark Exhibit 2,  
5 please.

6 (Exhibit 2 marked for identification  
7 by the court reporter.)

8 Q (BY MR. ROTHERT) Handing you what's  
9 been marked as Exhibit 2 and I've given Mr. Dierker  
10 a copy too, is this a posting from your Facebook  
11 page?

12 A Yes. That's where I would have saw  
13 it.

14 Q All right. And would you have --  
15 would that be your language added at the top there?  
16 "SLMPD CDT welcomes protesters"?

17 A I don't know if it was sent to me.  
18 Had to be sent -- had to pop up on my feed somehow.  
19 So I don't know it that's how it was sent or what.

20 Q Okay. And then this was posted, it  
21 says "September 18." Would that have been  
22 September 18, 2017? If you know?

23 A I would assume, yes.

24 Q Do you know or remember what is meant  
25 by "SLMPD CDT team welcomes protesters"?

1           A       Well, the sign says, it says, "Thank  
2   you for visiting Washington Avenue entertainment  
3   district," so.

4           Q       **So you meant this just as a greeting**  
5   **to protesters to downtown?**

6           A       Well, whoever took it and sent the  
7   picture out with stuff, I would imagine it was  
8   sarcasm or something.

9           Q       **Is it sarcasm on your part, posting**  
10   **it on your Facebook?**

11          A       I probably would have just forwarded  
12   it. Like I said, I didn't take the picture but  
13   somehow it wound up on my Facebook feed from  
14   somebody. I don't know where it came from.

15          Q       **And when you say you sent it sarcasm,**  
16   **what do you mean by that?**

17          A       I think it would be sarcasm because I  
18   don't think the protesters would welcome the police  
19   department.

20          Q       **So you testified earlier that you**  
21   **were called in to a protest at 1200 Clark; correct?**

22          A       Yes.

23          Q       **What is at 1200 Clark?**

24          A       It's the old police headquarters  
25   building.

1           **Q       Do you know what time of day it would**  
2     **have been that you were called to 1200 Clark?**

3           A       I think we were working 3 p.m. to 3  
4     a.m., and I'm guessing they probably -- I'd have to  
5     give you a time frame, Counselor.

6           **Q       That's fine.**

7           A       I'm just guessing it probably came --  
8     the call might have came out around 10 p.m.  
9     somewhere.

10          **Q       And when you were called to 1200**  
11     **Clark around 10 p.m., was that for a protest that**  
12     **was happening at 1200 Clark? Or --**

13          A       No, there was no protesters there.  
14     It was, I guess you could call it a staging area.

15          **Q       All right. And that was a staging**  
16     **area. How many other police officers were**  
17     **participating in that staging area; if you recall?**

18          A       There was probably a hundred police  
19     officers, I'm guessing.

20          **Q       Is this an unusual event, to be**  
21     **called to a staging area for -- with that many**  
22     **police officers there?**

23          A       Well, the -- it was unusual the way  
24     the -- I guess the information came to us because  
25     it came across the radio. And per the authority of

1 Cruiser 1, all remaining officers in odd-numbered  
2 districts report to 1200 Clark pending -- I think  
3 it was like pending further instructions.

4 **Q And what is Cruiser 1?**

5 A That's the Chief of Police at the  
6 time.

7 **Q And who was the Chief of Police at**  
8 **the time?**

9 A I believe it was interim Chief  
10 O'Toole.

11 **Q When you and the other officers**  
12 **arrived at 1200 Clark for that staging, was there a**  
13 **briefing given?**

14 A Actually we stood around for probably  
15 almost two hours, just waiting. And then the only  
16 information given was that we were going to go and  
17 document if we found any broken windows or  
18 anything, any kind of damage that looked like it  
19 possibly could have happened during the protest.

20 **Q Were there any -- did anyone speak to**  
21 **the whole group, give any kind of briefing to the**  
22 **group?**

23 A I remember Major Howard was there.  
24 It was pretty much lieutenants and below and we  
25 were standing around, waiting for somebody to come

1 and tell us, you know.

2 **Q Did the acting Chief O'Toole, did he**  
3 **speak to that group at that staging?**

4 A I don't remember him being there. I  
5 remember Major Howard, and the only other person  
6 that could have shown up was maybe Lieutenant  
7 Colonel Leyshock showed up, but I think he was at  
8 another location even.

9 **Q Beyond being told that you were going**  
10 **to go out and document any broken windows or other**  
11 **damage caused during protests, were you given any**  
12 **other instructions that night, or duties?**

13 A No.

14 **Q And what did you wind up doing that**  
15 **evening?**

16 A I was given the area from Tucker  
17 east, north of Market. So I went up to the next  
18 block, which would I guess be Chestnut, and I drove  
19 eastbound all the way to Broadway and then I would  
20 have made a left -- two lefts and came back, I  
21 think that's maybe Pine, all the way back down to  
22 Tucker, and I just zigzagged on the one-way streets  
23 going east and west, seeing if I saw anything.

24 Then there was other officers that  
25 were going on the north/south streets and other

1 officers that were west of Tucker and south of  
2 Market.

3 **Q Did you see anything in the area that**  
4 **you patrolled?**

5 A Yeah, the streets I went on, I think  
6 there was a -- we found a -- and I don't have the  
7 info but it was a broken window and some broken  
8 flowerpots and I -- all I would have done was write  
9 the address down and broken window, broken flower  
10 pot in front of this address and then we turned the  
11 notes in and somebody came back I guess the next  
12 morning and wrote a report.

13 **Q And would you have turned that in to**  
14 **what's called the documentation team? Or --**

15 A No, I didn't see --

16 **Q Or do you know who -- do you know**  
17 **who?**

18 A Somebody collected, they said, "Hey,  
19 does anyone -- did anyone see anything broken?"

20 I said, "Yeah."

21 "Did you write it down?"

22 I said, "Yeah."

23 Somebody collected it and then  
24 another person went and documented it. I don't  
25 know who the officer is that wrote the report for



1 the broken windows.

2 Q But it wasn't you?

3 A No.

4 Q After going around to document any  
5 damage that you saw, what did you do next?

6 A We went back to -- they released us.  
7 We went back to the district.

8 Q Have you heard anything or did you  
9 hear about a -- something called a kettle happening  
10 that night?

11 A I had never heard the word "kettle"  
12 until the next day in the media. It's never a term  
13 that we had ever heard or used before.

14 Q Okay. But if I -- do you know what  
15 I'm talking about if I am talking about the kettle  
16 that happened that night?

17 A Yes.

18 Q Were you involved in that in any way?

19 A No.

20 Q Were you around for it?

21 A No.

22 Q Did you have any one-on-one  
23 interactions with, or any interactions at all  
24 directly with any protesters that evening?

25 A No. Not unless they were a protester

1 and I didn't know they were and they just asked me  
2 for directions or something.

3 Q Are you familiar with the city  
4 ordinances regarding interfering with pedestrian  
5 and vehicular traffic?

6 A Yes.

7 Q And is part of your job, as a police  
8 officer all these years, enforcing those  
9 ordinances?

10 A Yes.

11 Q What is your understanding of what  
12 constitutes impeding or interfering with pedestrian  
13 traffic in a way that would be illegal?

14 A I think that if a person or a group  
15 of people were in the street and they were blocking  
16 the flow of traffic, I would think that you would  
17 give them a reasonable -- if it was one person, you  
18 might give them a reasonable amount of time or ask  
19 them to, you know, move out of the street, get up  
20 on the sidewalk.

21 If it was a group of people, then you  
22 would do the same thing. Give them a reasonable  
23 amount of time to get across the street. If they  
24 refused, I suspect you would give them an order or  
25 a series of orders to make sure that they

1 understood what you're saying.

2 Q Do you and -- you just answered me  
3 about streets. I was asking, though, about  
4 pedestrian traffic and sidewalks. So when --  
5 what's your understanding of when someone --

6 A Blocks a sidewalk --

7 Q Yeah.

8 A -- would be if -- if they're blocking  
9 and no one can walk down a sidewalk, you -- you  
10 have a right to a peaceful protest and an  
11 expression of your First Amendment, right of free  
12 speech, so you have the right to, you know, protest  
13 anything that you want on the sidewalk, but if  
14 you're blocking it and no one can go back and forth  
15 to work, then you should at least leave them, I  
16 would guess -- I would think common sense would --  
17 want to prevail.

18 The sidewalk's ten feet wide and you  
19 leave a three foot wide section that people can  
20 freely move up and down, that would seem reasonable  
21 to me.

22 Q All right. Are you familiar with a  
23 gentleman, Mr. Paul Nochario, N-o-c-h-a-r-i-o, I  
24 believe?

25 A Yes.

1           **Q       Who is he?**

2           A       He is a retired Lieutenant Colonel on  
3     the police department.

4           **Q       And do you know when he retired?**

5           A       I know it's been over a year. I  
6     don't know when.

7                   MR. ROTHERT: Those are all the  
8     questions I have.

9                               EXAMINATION

10          QUESTIONS BY MR. DIERKER:

11               **Q       With regard to Deposition Exhibit**  
12     **number 2, I'm a little unclear. You indicated that**  
13     **came from your -- and I will state for the record**  
14     **that Facebook is largely a mystery to me, I'm old,**  
15     **but you stated that that came from your Facebook**  
16     **page; is that --**

17           A       It popped up. I didn't take the  
18     picture and, like I said, I only recognize two  
19     people in it but somehow it popped up -- somebody  
20     took it and they sent it out and it popped up on my  
21     Facebook feed. It'd be like getting an email so to  
22     speak.

23               **Q       Okay. The comment at the top of the**  
24     **photograph about welcoming protesters, is that**  
25     **something you would have added to that?**

1           A       No, I think this is exactly how it  
2       came to me and I just like copied, hit copy and  
3       sent. Or copy and save, I don't know.

4           Q       Okay.

5           A       But it came through to my -- my  
6       Facebook page.

7           Q       Right. Would you think that  
8       **individual police officers have a right to express**  
9       **views about protesters?**

10          A       Well, yeah, that would fall under the  
11       First Amendment. Everybody has a right to their  
12       opinion.

13          Q       Did you take this post as indicative  
14       **in any way of an official position of the police**  
15       **department or the City of St. Louis?**

16          A       No.

17          Q       With regard to your, I'll call it  
18       **deployment, or to 1200 Clark on I think we can**  
19       **agree it was September 17, would you characterize**  
20       **that as an unusual event as far as the operations**  
21       **of the police department were concerned?**

22          A       Yeah. In my 25 years I never heard  
23       the chief or any representative get on and ask for  
24       the remaining half of the department to show up at  
25       a location.

1           **Q       And what impact did that have on**  
2     **policing at the rest of the city?**

3           A       Well, just the protest itself gave us  
4     what would have -- we would have considered a  
5     skeleton crew to safely guard the rest of the city.  
6     And by the chief having to call every odd number  
7     district counsel there, then it left the entire  
8     city's population being handled by just the  
9     remaining three district officers who would have  
10    been at a skeleton crew. Any major incident  
11    anywhere in the city and we wouldn't have had  
12    officers to deploy to it.

13           **Q       And with regard to the city**  
14    **ordinances involving impeding the flow of traffic,**  
15    **have you had some personal experience with**  
16    **enforcing those ordinances?**

17           A       Yes.

18           **Q       And what, if any, experience did you**  
19    **have with regard to enforcing the ordinance**  
20    **involving a large group of people?**

21           A       There was a protest a few years back,  
22    it was some coal miners protesting Peabody Coal.  
23    And I know they came in from West Virginia and they  
24    basically like coordinated with our department and  
25    the city. They -- they wanted to have a protest, a

1 peaceful protest, so that they could get their  
2 views seen by the media, their arguments, and so we  
3 -- we do that if they come and ask us, and we  
4 blocked the street off for them, and they walked  
5 from City Hall, which would be 1200 Market, down  
6 to, it's either like 8th or 9th Street. So we  
7 blocked off Market, we escorted them down, they  
8 turned in front of Peabody and we had that blocked,  
9 sectioned off so that they could peacefully  
10 protest.

11 And they walked up and down the  
12 sidewalk and they chanted on the bullhorns and  
13 everything, and then they informed us, they said,  
14 hey, we have six people that are designated that  
15 are going to be arrested and we've already posted  
16 their bond, we're just letting you know we're going  
17 to move them out to the street and you guys can  
18 give your commands and then -- they let us know, it  
19 was all orchestrated, hey, we're going to protest,  
20 we're going to sit in the street, we're going to  
21 block the traffic, you give us the commands, we're  
22 going to refuse to move and then you guys can  
23 arrest us. And we said, okay, that's fine.

24 The police department's in the  
25 middle. We have to protect their First Amendment

1 right to free speech and at the same time we have  
2 to protect the businesses or the community that we  
3 serve, their right to freely move and, so that no  
4 windows were broken or no one from Peabody Coal was  
5 assaulted and we have to do it without any  
6 political opinion one with way or the other.

7 **Q Well, specifically with regard to**  
8 **protesters who occupied the middle of the street,**  
9 **did the arrest of those protesters occur basically**  
10 **in the manner that you described, as requesting**  
11 **that they move, when they refused, they were**  
12 **arrested?**

13 A Yes.

14 **Q And did you have experience with a**  
15 **large crowd in the Grove at some point?**

16 A Yes.

17 **Q Could you describe that for us?**

18 A That would have been probably four or  
19 five years ago, and it was just, the captain of  
20 that district asked for the two-man car to work the  
21 -- later into 3 o'clock in the morning to make sure  
22 no cars would be broken into because there was a  
23 large gathering in the Grove.

24 And the situation was when the bars  
25 let out at closing time, there was some kind of



1 disturbance and about approximately a hundred  
2 people wound up in the middle of the intersection  
3 of Sarah and Manchester.

4 **Q Did you respond to that scene?**

5 A And, yeah, it didn't even come across  
6 the radio. I just happened to turn and drove up on  
7 it. And it wasn't a planned protest. It was more  
8 or less a scuffle in the middle of the street  
9 involving about a hundred people and I -- I would  
10 like to think that I used common sense approach --

11 **Q What, if anything, did you do with**  
12 **regard to the crowd control?**

13 A Instead of, you know, yelling on the  
14 radio that I had a large crowd and then officers  
15 start responding, then we got the risk of somebody  
16 being injured in an auto incident, I hit the air  
17 horn a couple times to let them know, give them  
18 basically a verbal without me saying anything, a  
19 presence that the police are here, which about 10  
20 or 15 people went back up on the sidewalks.

21 And then I, you know, I had the  
22 lights on, I got on the microphone and I said, hey,  
23 this is an unlawful assembly, you know, St. Louis  
24 police department requests you move back up on the  
25 sidewalk, which 10 or 15 more people moved up. So

1 the crowd slowly got smaller.

2 Eventually I got out, I told them,  
3 still you have to get out of the street or I'll  
4 call more officers, and a few more people dispersed  
5 up onto the sidewalk and then I made what I  
6 consider common sense decisions. I got my mace  
7 out. And instead of just walking up to mace  
8 somebody I made sure I stood there for like ten or  
9 fifteen seconds and I'm shaking my mace, give them  
10 a verbal command if they don't disperse, I'm going  
11 to mace the crowd, which 10 or 15 more people took  
12 that warning and got back up on the sidewalk.

13 So I started with a crowd of, with  
14 just me and another officer, a crowd of a hundred  
15 people and only two police officers, I was able to  
16 whittle it down, just through the air horn, siren,  
17 and verbal commands and showing them that I did  
18 have mace, down to a crowd of 20 to 25 and at the  
19 end, I -- they weren't a threat to us but I still  
20 had to break them up before it turned into a large  
21 fight.

22 So I took the mace, and I didn't  
23 target any one person. I pointed it up and as I  
24 walked into the crowd, I sprayed mace about ten  
25 feet in the air above everyone's head. And what

1 that does is it disperses, no one will get a direct  
2 effect but as it slowly floats back down to the  
3 ground, if you are close enough, you're going to  
4 smell it, it's going to be like someone blew pepper  
5 in your face and you're going to cough or sneeze.

6 And by doing that, I walked through  
7 the crowd and sprayed it above us so that, you  
8 know, I affected myself as much as I affected  
9 anyone else, and then I walked back through and  
10 just that alone, it got everyone to move out of the  
11 street and they all got back on the sidewalk and  
12 went to their cars and wherever else they were  
13 going that night, or in the morning. It was 3:00  
14 in the morning at that point.

15 Q At that point, you considered that  
16 they had dispersed?

17 A At that point, yeah, they had  
18 dispersed. Once they leave the street and they're  
19 all going their separate ways, then they're  
20 dispersed. And I just sat there for another 15  
21 minutes and monitored them to make sure they didn't  
22 reassemble somewhere else.

23 Q And I think during your career as a  
24 police officer you functioned as a, is it a field  
25 training officer?

1 A Yes.

2 Q What does that involve?

3 A Involves getting a recruit out of the  
4 academy and then they ride with me for 75 working  
5 days, and basically get them to the point where I  
6 can pass them and inform the commander that they're  
7 ready to ride by themselves and respond to radio  
8 calls.

9 Q Does that call for you to make sure  
10 they're familiar with the department's policies  
11 regarding arrests and use of force?

12 A Yes.

13 Q And with regard, you're, correct me  
14 if I'm wrong, but you're aware that your deposition  
15 is being given in this case, which is formally  
16 styled Ahmad versus City of St. Louis, involves  
17 claims relating to the various protests and  
18 disturbances in September of 2017? You're aware  
19 that that's why you're here?

20 A Yes.

21 Q To what extent, if any, are you aware  
22 of any effort by the police department to inform  
23 officers of the preliminary injunction entered by  
24 the judge in this case?

25 A There was a -- I believe the chief at

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1 the time had sent out an email.

2 Q Chief O'Toole?

3 A Chief O'Toole.

4 Q And you saw that email?

5 A Yes.

6 Q All right. Is that, in your  
7 experience, is it normal for the -- for  
8 headquarters to inform officers of any judicial  
9 decision that affects operation?

10 A Yes.

11 MR. DIERKER: Mr. Rothert, I pass the  
12 buck back to you.

13 MR. ROTHERT: Okay.

14 RE-EXAMINATION

15 QUESTIONS BY MR. ROTHERT:

16 Q Um, back to September 17, 2017, you  
17 were working a 3:00 to 3:00 shift?

18 A I believe it was 3 p.m. to 3 a.m.,  
19 yes.

20 Q Okay. So you would have gotten off  
21 work on September 18 at 3 a.m.?

22 A If we got off on time.

23 Q Okay. Maybe later?

24 A Possibly later.

25 Q All right. And looking at Exhibit 2

1     **again, this is -- is that your -- I don't know the**  
2     **right word, I think it's avatar. Is this your**  
3     **Facebook image you had on that account?**

4             A       It was, yes.

5             Q       **So this Facebook posting at 1:47 a.m.**  
6     **on the 18th would have been while you were on duty?**

7             A       Yeah, that's probably when it came  
8     into my feed. My Facebook feed.

9             Q       **The Peabody Coal protest that you**  
10    **referenced, what's -- which streets did you, or did**  
11    **the police department or the city block off for**  
12    **those protests?**

13            A       Well, we escorted -- we gave them a  
14    police escort so they didn't get run over by any  
15    cars crossing, and that would have been from City  
16    Hall all the way down to the street which would --  
17    is east of the Peabody headquarters. And I think  
18    that is 8th or 9th Street that they're on.

19            Q       **Okay. And it would have been on**  
20    **Market?**

21            A       At the corner of Market, yes. Or is  
22    it -- yeah, I think it's the corner of Market, yes.  
23    Market -- the building takes up like the block from  
24    Market to Chestnut.

25            Q       **Okay. I can see it.**

1 A Okay.

2 Q But what street were folks marching  
3 on?

4 A They marched down Market and then  
5 they turned on the side street, which was 8th or  
6 9th, and we had that blocked off for them so they  
7 could protest.

8 Q All right. So that march technically  
9 violated the ordinance by -- because vehicles  
10 couldn't use that street at the time because of the  
11 protest; right?

12 A Vehicles would have been delayed by a  
13 minute or two. But if you coordinate with us, we  
14 were happy to give you that, that freedom.

15 Q And do you know what the process is?  
16 Is there an established process for coordinating  
17 with the police department, if you know?

18 A I don't know the exact. You would  
19 have -- I would imagine that you would contact City  
20 Hall and the headquarters which would be the  
21 chief's office.

22 Q Then you mentioned the protest at the  
23 Grove and that you told people there that they were  
24 an unlawful assembly. What do you mean by unlawful  
25 assembly?

1           A       In that incidence, it's approximately  
2   a hundred people so I can't physically count each  
3   one and they were in the middle of the  
4   intersection. So any traffic that was going east  
5   or west on Manchester or north or south on Sarah  
6   would not have been able to go through the  
7   intersection.

8           **Q       And was there any force or violence**  
9   **being used by any of those folks?**

10          A       Well, there was pushing and shoving  
11   against each other in there but we waited around,  
12   no one reported any assaults to us. And no one  
13   attempted to assault us while we were there.

14          **Q       Do you -- what year was that in the**  
15   **Grove, do you think? Within a year or two.**

16          A       Yeah, let me guess. Captain  
17   Swiderski was the captain and I think he's been  
18   retired three or four years, so let's take a shot  
19   at 2014?

20          **Q       Okay. Somewhere around 2014?**

21          A       Maybe.

22          **Q       Okay. And when you say you had mace,**  
23   **is that -- are you using that -- is that pepper**  
24   **spray, same thing as pepper spray?**

25          A       Yeah.



1           Q       And what kind of delivery device are  
2   you issued?

3           A       It's a small, probably six ounce,  
4   handheld can.

5           Q       Are you familiar with some people in  
6   the police department having more like foggers that  
7   can --

8           A       I think the CDT team has foggers.

9           Q       You do not?

10          A       No, just normal officers don't have  
11   that.

12          Q       And finally a couple questions about  
13   the email from Chief O'Toole about the preliminary  
14   injunction in this case. Does -- do you have a --  
15   does that go to your, like a police department  
16   issued email address?

17          A       Yes.

18          Q       Does every police officer have one?

19          A       Yes.

20          Q       And other than the email from the  
21   then chief, did you receive any other education or  
22   information about the preliminary injunction in  
23   this case?

24          A       No, they would have copied it and  
25   placed it in the email for everyone to review.

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1           Q       And as best you can remember, was  
2       this -- did it explain what the preliminary  
3       injunction was? Or what did it say?

4           A       I think it was actually a copy of the  
5       injunction from the judge. But I haven't read it  
6       in over a year, so.

7           Q       But you did read it at the time?

8           A       At the time, yes.

9           Q       Do you know approximately when that  
10       would have come, what month? Or --

11          A       I know it would have been after the  
12       17th.

13                   MR. ROTHERT: Okay. That's all I  
14       have.

15                   MR. DIERKER: I -- as a veteran  
16       witness, officer, you -- I -- Mr. Rothert is  
17       reeducating me at what I'm supposed to do in  
18       depositions. But you have the right to read the  
19       deposition and make corrections and sign it, or you  
20       can waive signature and rely on --

21                   THE WITNESS: I'll waive signature at  
22       this time.

23                   MR. DIERKER: We're happy to waive.

24                   MR. ROTHERT: Okay. Thank you.

25       That's it.

1 (Wherein, the taking of the instant  
2 deposition ceased at 11:12 a.m.)

3 (By agreement between Counsel and  
4 with the consent of the witness, the signature is  
5 expressly waived.)

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1 CERTIFICATE OF REPORTER

2

3 I, TARA SCHWAKE, a Registered  
4 Professional Reporter and Notary Public within and  
5 for the State of Missouri, do hereby certify that  
6 the witness whose testimony appears in the  
7 foregoing deposition was duly sworn by me; that the  
8 testimony of said witness was taken by me to the  
9 best of my ability and thereafter reduced to  
10 typewriting under my direction; that I am neither  
11 counsel for, related to, nor employed by any of the  
12 parties to the action in which this deposition was  
13 taken, and further that I am not a relative or  
14 employee of any attorney or counsel employed by the  
15 parties thereto, nor financially or otherwise  
16 interested in the outcome of the action.

17

18

19

20

\_\_\_\_\_  
Notary Public in and for

21

The State of Missouri

22

23

24

25

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